

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **VICE CHAIRMAN SCOTT MENDENHALL**, on March 25, 2003 at 3:00 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Eileen J. Carney, Vice Chairman (D)
Rep. Scott Mendenhall, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Larry Cyr (D)
Rep. Ronald Devlin (R)
Rep. Gary Forrester (D)
Rep. Ray Hawk (R)
Rep. Hal Jacobson (D)
Rep. Jesse Laslovich (D)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Holly Raser (D)

Members Excused: Rep. Mark Noennig, Chairman (R)
Rep. Arlene Becker (D)
Rep. Penny Morgan (R)
Rep. Alan Olson (R)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp in these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: SB 163, SB 222, SB 288, 3/7/2003
Executive Action: None

HEARING ON SB 163

Sponsor: SEN. JEFF MANGAN, SD 23, Great Falls.

Opening Statement by Sponsor:

SEN. MANGAN stated that SB 163 would allow local governments to accept payments for taxes and fees by credit cards. It would allow the local governments to impose convenience fees and enter into agreements with banks in order to accept such payments.

Proponents' Testimony:

Gordon Morris, Montana Association of Counties (MACo), provided the Committee with a copy of the proposed bill and the resolution allowing the payment of fees and taxes by credit card, attached as Exhibit 1. He went on to say that SB 163 was very straight forward and would simply authorize counties to accept payment of taxes by virtue of the use of credit cards. He continued, stating that SB 163 would enable and authorize such a process.

EXHIBIT (loh63a01)

Ronda Carpenter, Montana County Treasurers Association, expressed her support of SB 163. She explained that they had a number of customers that wanted to be able to pay their taxes by credit card. **Ms. Carpenter** discussed the fees that would be charged for use of credit cards and the reason for those fees. She then informed the Committee how and when payments were received from the credit card companies.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MAEDJE asked **SEN. MANGAN** how they would get around the problem of credit card companies disallowing use of credit cards to pay taxes and fees. **SEN. MANGAN** explained that it would be handled by the agreement between the county treasurer's office and the credit card company.

REP. BITNEY asked **SEN. MANGAN** to give some examples of how the fees would work. **SEN. MANGAN** deferred to Ms. Carpenter for the answer. **Ms. Carpenter** responded that they were looking to use credit card payments for property taxes and vehicle licensing fees. She continued that the credit card companies usually charged somewhere between one and three percent. She went on to

say that there were some credit card companies that would not allow them to add convenience fees; however, there were those that would.

REP. BITNEY asked Ms. Carpenter to clarify how the fee charged the consumer would work. **Ms. Carpenter** explained that the fee was charged to the vendor not the consumer. She continued that currently the county treasurers were not recovering the fee they were charged. She went on to say the SB 163 would allow them to recover those fees.

There was further discussion between REP. BITNEY and Ms. Carpenter to clarify the charges for use of credit cards to make payments and the recovery of fees charged.

REP. DEVLIN asked Mr. Morris to tell him when the taxes would be considered paid since payment from the credit card company could take a few days. He further asked what would happen if the customer protested the transaction delaying the payment to the county treasurer. He then asked if there was a disputed amount, if penalty and interest would come into play. **Mr. Morris** responded that if the taxpayer challenged the charge to his credit card he would then be considered delinquent in the payment of his taxes, and penalties and interest would come into play.

REP. DEVLIN asked Mr. Morris for further clarification. **Mr. Morris** explained that under the scenario the person who challenged the charge to his credit card would be delinquent on his taxes from the due date on his tax statement.

REP. MENDENHALL asked Ms. Carpenter about the per-transaction fees and the monthly fees charged by the provider company. He further asked if the bill provided for the payment of all of the fees. **Ms. Carpenter** indicated that through discussion they felt that the three percent charge would be sufficient. She went on to say that they would not know for sure until they had experience using the process for a couple of years.

Closing by Sponsor:

SEN. MANGAN stated that the state and federal governments already allow payment of taxes via credit cards. He expressed his hope that the Committee would pass SB 163 and allow local and county governments to do the same.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 21.9}

HEARING ON SB 288

Sponsor: SEN. JEFF MANGAN, SD 23, Great Falls.

Opening Statement by Sponsor:

SEN. MANGAN informed the Committee that the purpose for SB 288 was to clarify the intent of the Legislature regarding whether or not Charter Consolidated Counties fell under the County Compensation Board. **SEN. MANGAN** stated that SB 288 specifically indicated that it was not the intent of the Legislature for them to fall under that category. He further indicated that there were only three or four counties statewide that the bill would affect.

Proponents' Testimony:

Gordon Morris, Montana Association of Counties, presented the Committee with a proposed amendment to the bill, attached as Exhibit 2. He went on to explain that the proposed amendment was for clarification. **Mr. Morris** discussed charter governments and how the bill applied to them. He proceeded to explain the intent of the amendment and indicated that the title would also have to be amended.

EXHIBIT (loh63a02)

{Tape: 1; Side: A; Approx. Time Counter: 21.9 - 28.1}

Mike Grayson, Anaconda-Deer Lodge County, stated that he supported SB 288 and that compensation boards should not apply to charter forms of government and did not work for them.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RASER asked Mr. Morris if the original language of the bill was intended to apply to charter governments. **Mr. Morris** stated that originally it had been in the bill that it would apply. He continued that the Interim Committee opted to have it not apply.

REP. RASER asked SEN. MANGAN if the proposed amendment would be fine with him. **SEN. MANGAN** indicated that he had no objection to the proposed amendment. He replied that he wanted the Legislature to put in the bill what their intent was.

REP. JACOBSON asked **SEN. MANGAN** what precipitated the increase from two to four taxpayers on the board. **SEN. MANGAN** responded that since they were defining the legislative intent regarding county compensation boards they would also increase the number of taxpayers that could be on the board.

REP. JACOBSON asked **SEN. MANGAN** if there were some counties that had shown interest in seeing the number raised to four. **SEN. MANGAN** replied that no one had specifically come to them and asked for the raise in numbers. However, more interest for the increase had been shown in the larger counties.

Closing by Sponsor:

SEN. MANGAN stated that SB 288 was a simple bill and the intent of the Legislature regarding consolidated counties should be clarified under the law.

CHAIRMAN NOENNIG arrived at the Committee Meeting prior to the Hearing on SB 222.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 10.4}

HEARING ON SB 222

Sponsor: **SEN. JOHN BOHLINGER, SD 7, Billings.**

Opening Statement by Sponsor:

SEN. BOHLINGER discussed the Big Sky Resort, its growth and growth problems. He went on to talk about the history of the area and its boundaries. **SEN. BOHLINGER** stated that it had been the Big Sky Owner's Association which had requested SB 222. He went on to say that SB 222 had been designed to assist resort areas to incorporate. **SEN. BOHLINGER** then walked the Committee through the bill and explained each section. He further discussed that the bill would allow nonresident landowners to vote in local elections. He continued by discussing the amendment that had been added to SB 222 in the Senate. He concluded saying that it was the desire of the owners to form a government.

{Tape: 1; Side: B; Approx. Time Counter: 10.4 - 22.1}

Proponents' Testimony:

Penni Nance, Big Sky Owners Association (BSOA), spoke in support of SB 222. **Ms. Nance** provided a copy of her written testimony

for the record, attached as Exhibit 3. **Ms. Nance** also provided copies of letters and postcards from BSOA Members, attached as Exhibits 4 and 5 respectively.

EXHIBIT(loh63a03)

EXHIBIT(loh63a04)

EXHIBIT(loh63a05)

Don Loyd, Big Sky Owners Association (BSOA), gave his background as a resident of Big Sky. He went on to say that he was there to add his support for SB 222. **Mr. Loyd** stated that they needed governance in Big Sky and for that to happen they needed for SB 222 to be passed. He pointed out that there was little opposition to Big Sky becoming a municipality, the opposition was to nonresident landowners being allowed to vote in local elections. He expressed his desire that the bill be passed and the resident voters be allowed to decide the issue.

Dick Wiggins, Director, Big Sky Owners Association, Vice President, Big Sky Water and Sewer District, spoke in support of SB 222. **Mr. Wiggins** presented copies of Mr. Ron Edwards, General Manager, Big Sky County Water and Sewer District's written testimony in support of the bill, attached as Exhibit 6. **Mr. Wiggins** paraphrased Mr. Edwards' testimony.

EXHIBIT(loh63a06)

Doug Simpfenderfer, Big Sky Resident, stated that he supported the bill as amended. He pointed out that they needed the bill in order to form a municipality.

Jean Hall, home owner at Big Sky, expressed her support for SB 222 as amended.

Kathy Simpfenderfer, Big Sky Resident, declared her support of SB 222 as amended.

Mona Jamison, Lobbyist, Big Sky Owners Association, spoke in support of the bill and discussed the reasons that the Big Sky Owners Association were requesting the Committee's support of SB 222. **Ms. Jamison** distributed a handout in support of SB 222, attached as Exhibit 7.

EXHIBIT(loh63a07)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 24.6}

Opponents' Testimony:

Bill Olson, Member Madison County Planning Board and Member of Big Sky Owners Association Board of Directors, stated that he supported portions of SB 222 but was opposed to parts of Section 4 that pertained to allowing nonresidents to vote. He pointed out what he felt were flaws in the bill and explained why he felt so.

Jim Johnson, Homeowner in Big Sky, spoke in opposition to SB 222. **Mr. Johnson** provided his written testimony which is attached as Exhibit 8.

EXHIBIT (loh63a08)

Joel Scrafford, expressed his concerns about nonresidents being allowed to vote and its adverse impact on Montana. **Mr. Scrafford** presented the Committee with a copy of his written testimony and a petition in opposition to that portion of SB 222 which would allow the nonresidents to vote. Mr. Scrafford's written testimony is attached as Exhibits 9.

EXHIBIT (loh63a09)

Dave Leverett, Businessman and home owner, Big Sky, stated that there was a great deal of frustration among the populace at present because of the \$44,000 taken from the resort tax fund to help pay for the lobbyist to support SB 222. He continued that a large segment of the residents of Big Sky were cut out of the process.

Patrick Collins, Member, Big Sky Owners Association, presented the Committee with a Petition signed by 207 people from the Big Sky area, attached as Exhibit 10. **Mr. Collins** asked the Committee to amend SB 222 to remove any language that would allow nonresident landowners to vote in local elections. He continued saying that the Big Sky Owners Association was comprised of mainly out-of-area owners. He further remarked that he believed that the amendment allowing nonresidents to vote was unconstitutional. **Mr. Collins** stated that the residents of Big Sky would like to vote on incorporation, but only if the amendment were removed allowing nonresidents to vote.

EXHIBIT (loh63a10)

Greg Van Horssen, representing the Schlueter Group, spoke in opposition to SB 222. **Mr. Van Horssen** explained that he represented landowners outside of the Big Sky area, but adjacent to it. He expressed their concerns that should Big Sky

incorporate they would be subject to annexation, which they were not interested in happening. He further commented on what a municipality could do to the bordering landowners and asked the Committee to consider these effects in considering the bill.

Mr. Van Horssen submitted two proposed amendments to SB 222, attached as Exhibit 11 and 12. **Mr. Van Horssen** proceeded to explain the two amendments and discussed their differences. He concluded by asking the Committee to strongly consider his amendments.

EXHIBIT(loh63a11)

EXHIBIT(loh63a12)

Franklin E. Culver's written testimony in opposition to SB 222 was provided to the Committee for their review, attached as Exhibit 13.

EXHIBIT(loh63a13)

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MENDENHALL referred to Page 2 of the bill and asked **SEN. BOHLINGER** how they had come up with the number of 100. **SEN. BOHLINGER** replied that they had to start somewhere.

REP. MENDENHALL asked **SEN. BOHLINGER** if a percentage would be better. **SEN. BOHLINGER** responded that he felt that 100 would be just as good, however, he expressed his opinion that it would not make a difference.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 27.4}

REP. MENDENHALL asked **SEN. BOHLINGER** if things did not go well if there was a provision to undo it by 100 signatures. **SEN. BOHLINGER** responded that there was no such provision. **SEN. BOHLINGER** proceeded to review the process and things that would have to be done in order for the nonresident landowners to be able to vote in the first place. He further explained that they would only be able to vote in the municipal elections.

REP. MENDENHALL asked **SEN. BOHLINGER** if in five or ten years the resident voters decided that due to the inclusion of the nonresident voters there had been considerable problems, would there be a process whereby they could put it back on the ballot to disallow the nonresidents from voting. **SEN. BOHLINGER** replied that there was nothing in SB 222 that would allow it; however,

legislation could be introduced to try to take away the privilege.

REP. MAEDJE asked Bill Olson what there was about the bill that they actually needed. **Mr. Olson** responded that they needed the Legislature to allow them to form a municipality. He went on to say that the issue of nonresidents voting needed more debate as there were a number of people with concerns.

REP. MAEDJE asked Mr. Olson if Section 4 was the section they did not want to have in the bill. **Mr. Olson** replied it was not all of Section 4, but that part that related to nonresidents voting.

REP. MAEDJE asked Mr. Olson if he was in agreement with Mr. Van Horssen's amendments. **Mr. Olson** stated he had not seen the proposed amendments; however, he had heard what he had said. He went on to say he would have to think about it.

REP. BITNEY asked SEN. BOHLINGER if this was a precedent in other states and stated that he was concerned about the voter fraud issue. **SEN. BOHLINGER** stated that it was his understanding that the resort community of Telluride, Colorado had gone through the same process. He went on to say that the community had provided an opportunity for nonresident property owners to participate in municipal elections. He continued that he did not know of any others.

REP. BITNEY asked SEN. BOHLINGER if he could clarify the difference between Big Sky and St. Regis as resort areas and Whitefish and Red Lodge as resort areas for tax purposes. **SEN. BOHLINGER** replied that he did not know why Big Mountain was not considered a major resort area. He pointed out that for some reason they did not meet the criteria.

REP. BITNEY asked Mona Jamison if she could respond to his question to SEN. BOHLINGER. **Ms. Jamison** referred to Section 3, Page 2. She went on to say that a resort area district meant that they had their own governing board. She went on to say that the difference was that resort areas in the tax statute applied to the formation of a resort area for purposes of the resort tax for unincorporated areas. **Ms. Jamison** stated that Whitefish, West Yellowstone, Virginia City and Red Lodge were already incorporated and, therefore, the bill did not apply to them. She went on to say that the bill would only apply to a resort area or an area that would potentially qualify as a resort area so determined by the Department of Commerce; therefore, it was extremely limited.

REP. BITNEY asked Ms. Jamison if she would address the issue of extraterritorial area and taxation without representation. **Ms. Jamison** referred to Mr. Van Horssen's amendments. She went on to say that there was an issue about doughnut jurisdictions and the fact that municipalities could extend their jurisdiction three miles into that doughnut area without a vote. She continued that it was a hot issue in Local Government Committees. **Ms. Jamison** stated that she did not feel that this bill should address the issue of doughnut jurisdictions and that they should be dealt with on their own merits.

REP. FORRESTER asked SEN. BOHLINGER what percent of the Big Sky Owners Association were resident and what percent nonresident. **SEN. BOHLINGER** responded that he believed 60 percent of the Big Sky Owners Association were residents and 40 percent nonresidents. SEN. BOHLINGER further replied that the membership roster for Big Sky Owners Association totaled 1,386 not counting multiple property owners. He continued that of those, 563 were full time Montana residents.

REP. FORRESTER asked SEN. BOHLINGER if he thought it was a true statement that, if they passed SB 222, nonresidents would have local control over residents of Montana. **SEN. BOHLINGER** gave an example and responded that he felt it was a taxation without representation issue.

REP. FORRESTER further asked SEN. BOHLINGER if they were going to allow absentee voting if it was possible that the nonresident absentee voters could stifle any local opposition to matters sent to the voters. **SEN. BOHLINGER** responded that whether they were residents or nonresidents they had been very supportive of those things that were good for Big Sky. He went on to list various items that had been supported. SEN. BOHLINGER stated that he did not believe the ability to vote in municipal elections would have any influence on whether a person decided to invest in Big Sky.

REP. RASER asked SEN. BOHLINGER if nonresident owners would be allowed to vote by absentee ballot in municipal elections. **SEN. BOHLINGER** replied that they would.

REP. RASER expressed some concerns, such as putting taxes into schools, to SEN. BOHLINGER and asked him if would address her concerns.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 25.2}

SEN. BOHLINGER responded that he could only speak for himself and not for the other property owners at Big Sky. He expressed his

feelings about paying his taxes to help the community and stated that he did not feel he was the only one that felt that way.

REP. RASER redirected her question to Ms. Jamison. **Ms. Jamison** responded that it did not affect school elections. She went on to say that school elections were in a separate section of the law. **MS. Jamison** went on to say that things that happened in Big Sky had been engineered and driven by the nonresident landowners, the Big Sky Owners Association. She continued that she felt it was critically important to understand that it provided a track record of what the nonresident owners were willing to do.

REP. RASER asked Ms. Jamison what issues nonresident voters would be allowed to vote on. **Ms. Jamison** replied that once you have had the vote on the creation of the municipality, the form of government and the elected officials there would not be much left.

REP. RASER asked Mr. Olson if he could tell the Committee the present resident population of Big Sky. **Mr. Olson** responded that there were approximately 1,200 total residents.

REP. RASER asked Mr. Olson what he thought the outcome would be if they were to vote now on whether or not to allow nonresidents to vote. **Mr. Olson** stated that it would be hard to tell. He went on to say that a majority of the residents would probably vote the issue down.

REP. RASER asked Mr. Olson about the concerns he had with the language of the bill and asked him if he had some changes in mind that would improve the language and make it acceptable. **Mr. Olson** responded that one thing would be to add specific qualifications for property owners. He went on to say that the other concern was the ratio of residents to nonresidents. He commented that he did not have a problem of nonresidents having a say in what happened in Big Sky, however, they did not want to be overwhelmed by the nonresidents when it came to voting.

REP. NOENNIG asked Mr. Johnson if he agreed with Mr. Olson that nonresidents should have some say or if he was opposed to nonresidents having any say at all. **Mr. Johnson** stated that he would agree that the Associations should have something to say in the community. He continued that he did not believe that nonresidents should have the right to vote.

REP. NOENNIG asked Mr. Johnson why he had said that they could not wait two years. **Mr. Johnson** stated that what Mr. Olson had alluded to was that, should the matter be taken to the registered electors, it would not pass. He went on to say that what that

meant was that they would have to come back to the Legislature in two years so they could obtain a bill that the registered voters would pass.

REP. NOENNIG asked Mr. Johnson if he was talking about the formation of a municipality or allowing nonresidents to vote.

Mr. Johnson stated that should SB 222 pass, it would go back to the registered electors. He went on to say that the enabling legislation would fail because the resident electors did not want to give the nonresidents any opportunity to have control of the community.

REP. NOENNIG asked Mr. Johnson if he felt that as long as there was a possibility that the nonresidents could vote the residents would deny the opportunity for the incorporation. **Mr. Johnson** stated that he firmly believed that would be the case.

REP. NOENNIG asked Ms. Jamison if nonresidents would be allowed to sit on the City Council. **Ms. Jamison** replied that they could if they ran for office and were elected.

REP. NOENNIG asked Ms. Jamison if she had looked at the percentage ownership requirements and other criteria that were involved in the Telluride situation, and if she would consider incorporating that concept into the current bill. **Ms. Jamison** stated, with explanation, that she would consider it a friendly amendment.

REP. MAEDJE asked Ms. Jamison where they would draw the line on who was a resident and who was not. **Ms. Jamison** stated that they would have to be a property owner.

REP. MAEDJE asked Ms. Jamison if renters would be considered resident voters. **Ms. Jamison** stated that it was standard law in the State of Montana that renters who met residency requirements would be considered residents.

REP. MAEDJE asked how they determined residents under the thirty-day residency requirement mentioned in the bill. **REP. MAEDJE** and **CHAIRMAN NOENNIG** discussed the issue.

Closing by Sponsor:

SEN. BOHLINGER talked about the concerns of the opponents and his feelings that they had nothing to fear in allowing the nonresidents to vote. He went on to say that he did not understand the opposition to the bill. **SEN. BOHLINGER** pointed out that since the nonresidents paid taxes they were talking

about taxation without representation. He continued stating that he felt the opportunity to participate should be fundamental.

SEN. BOHLINGER remarked that he felt residency was established by registering to vote in general elections, federal elections, state elections, but not municipal elections. He then commented on the concerns of Greg Van Horssen. **SEN. BOHLINGER** concluded by stating that he felt SB 222 was a good bill and would give Big Sky the opportunity to become self-governing. He asked the Committee for their support.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 25.4}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 3.2}

ADJOURNMENT

Adjournment: 5:40 P.M.

REP. MARK NOENNIG, Chairman

MARI PREWETT, Secretary

MN/LK

EXHIBIT (loh63aad)